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1 Bound Math and Science Program to Room 408, reading
2 what you wrote at that time, am I understanding
3 correctly that you believe that that move was related
4 to or precipitated by Kate Sullivan, a situation
5 involving Kate Sullivan?

6 A. Yes.

7 Q. Did you talk to Kate Sullivan about that
8 matter?

9 A. No.

10 Q. I'm handing you a document that's
11 identified as Brown-Cole 22. It is a first page of a
12 document, and this is the form in which I got it in
13 the documents that you produced. It has written on
14 the top Exhibit A. Is that your handwriting?

15 A. Yes.

16 Q. This was attached as an exhibit to a
17 grievance that you filed in early September?

18 A. Yes.

19 Q. When did you first see this newsletter?

20 A. August, 2002.

21 Q. Do you know what date in August of 2002?

22 A. I'm not sure, but I could take a guess,
23 mid.

24 Q. Mid August?

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1 A. If I have to take a guess, yes.

2 Q. Now, on August 12th, Paul Morris met with
3 the Upward Bound Math Science Coordinators including
4 you; is that correct?

5 A. I don't recall the date, but I know we did
6 meet somewhere around that time. We did meet, yes.

7 MR. WILLIAMS: Can you mark that as
8 Cole Number 1, and this one is Cole Number 2.

9 (Whereupon, the documents were marked
10 as Exhibits Cole Nos. 1 and 2 for identification.)

11 BY MR. WILLIAMS:

12 Q. I'm placing before you a document that's
13 marked as Cole Number 1, and represent to you that
14 it's a copy of the Complaint that was filed on your
15 behalf in this lawsuit.

16 Would you turn to paragraph 14.
17 There's reference to a meeting that occurred on
18 August 12th, 2002, a meeting with Paul Morris.

19 A. Okay.

20 Q. I assume that you reviewed this Complaint
21 before it was filed?

22 A. Yes.

23 Q. And that it's accurate to the best of your
24 knowledge and recollection?

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1 A. Yes.

2 Q. Does that refresh your recollection as to
3 the date of what I referred to as the Paul Morris
4 meeting?

5 A. Yes.

6 Q. And it was on that date that Paul Morris
7 told you about the decision to move the Upward Bound
8 Math Science group to Room 408?

9 A. Yes, that wasn't the exact language, but
10 --

11 Q. The Complaint says, on or about August 12,
12 2002, Paul Morris met with Plaintiff and other
13 members of his department and informed them that he
14 had unilaterally made a decision to relocate Upward
15 Bound Math Science Program from their current
16 multiple offices to a single office that had been
17 occupied by the SOAR Program.

18 Is that an accurate statement?

19 A. Pretty much, yes.

20 Q. Well, in what respect is it inaccurate?

21 A. Well, unilaterally means that the words he
22 used were personal. It was his personal decision
23 that the Upward Bound Math Science group had their
24 own assigned space.

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1 Q. And he also told you that that decision
2 had been approved by -- at a higher level in the
3 college?

4 A. Yes.

5 Q. Were you happy about that decision?

6 A. No.

7 Q. As a matter of fact you were very unhappy
8 about it?

9 A. I wasn't satisfied, if that means
10 unhappiness.

11 Q. I'm handing you a document marked Brown-
12 Cole 19 through 21.

13 Is this a copy of the grievance you
14 filed on September 5th, 2002?

15 A. Yes.

16 Q. And the grievance involved what you refer
17 to here, and what was referred in Brown-Cole 22, the
18 newsletter we talked about a few minutes ago as the
19 promotion of Paul Morris?

20 A. Yes.

21 Q. What happened first, did you see the
22 newsletter, or did you have the August 12th meeting
23 with Paul Morris?

24 A. What happened first, did I see the

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1 newsletter. I don't recall what happened first.

2 Q. Based upon your testimony a few minutes
3 ago, would it be fair to say that although you don't
4 remember whether you saw the newsletter first or had
5 the meeting, that the two events happened within days
6 of each other?

7 A. They were two different issues. One was
8 the move, and one was a promotion issue.

9 Q. My question isn't were they two different
10 issues. My question is did you see the newsletter
11 within --

12 A. I said I didn't recall.

13 Q. Wait a minute. A few minutes ago you
14 said, when I asked you about the newsletter, you saw
15 it in mid August?

16 A. Right.

17 Q. Then we talked about an August 12th
18 meeting, correct?

19 A. Right.

20 Q. My question is, is it fair to say that you
21 saw this newsletter within a few days of the August
22 12th meeting?

23 A. Yes.

24 Q. The reason that you filed the grievance is

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1 because you felt aggrieved about the fact that you
2 didn't have an opportunity to apply for this
3 promotional opportunity?

4 A. Yes.

5 Q. Is the position Special Programs Director
6 a position which exists within the college at your
7 campus today?

8 A. I don't think so. It's at Owens Campus,
9 Owens Campuses, I think.

10 Q. And given the fact that you've never
11 applied for a promotional opportunity during your
12 years of employment at Delaware Tech, are you telling
13 me that this particular position is the only one that
14 would have been of interest to you over all those
15 years?

16 A. No, I'm not telling you that. There are
17 other positions that have not become available that
18 don't interest me, but that particular one interested
19 me.

20 Q. Ultimately, it was determined that Mr.
21 Morris was not, in fact, promoted to that position,
22 and it was more accurately characterized as a
23 reclassification; is that your understanding?

24 A. Yes, and that came after I filed the

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1 grievance.

2 Q. And Mr. Morris didn't end up in the
3 position of Special Programs Director; is that your
4 understanding?

5 A. My understanding is that he was the
6 Special Programs Director at that time.

7 Q. And your understanding basically is
8 derived from the newsletter that we referred to?

9 A. No, mine is based on the deposition a few
10 weeks -- last week, that he held the position of
11 Special Programs Director from around June to
12 November, and he went from a pay grade 16 to a pay
13 grade 17.

14 Q. Did you, in filing this grievance, refer
15 to a policy or policies of the college; is that
16 correct?

17 A. Yes.

18 Q. Is it also correct that the grievance does
19 not allege race discrimination?

20 A. No.

21 Q. Where is the -- point to me where you say
22 that you were a victim of discrimination on the basis
23 of race?

24 A. Page -- here, look at 4.01 on the second

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1 page. It states, in filling vacancies qualified
2 regular college employees receive equal consideration
3 for promotion in accordance with the college's
4 statement of affirmative action policy, regardless of
5 race, color, creed, sex or national origin.

6 And go to page 3, finally, it's my
7 belief that promoting Paul Morris into the position
8 of Special Programs Director violated Section 1
9 policy to non-discrimination affirmative action. And
10 that's the statement.

11 Q. So you're telling me that if, in fact,
12 this position had been posted, you would have
13 applied?

14 A. I'm telling you the fact -- I'm sorry. I
15 sort of jumped the gun. Repeat that for me. I'm
16 sorry.

17 Q. Are you telling me that if this position
18 had been posted, at that time you would have applied?

19 A. I'm telling you that I would have
20 evaluated the situation -- it was an interesting
21 position -- and taken into consideration and factor
22 in the business, and factor in the wage increase, how
23 much the wage increase would have been at that time.

24 I would have weighed all the options

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1 given an opportunity to have the position posted,
2 yes.

3 Q. So you don't know whether you would have
4 applied or not. You're just telling me you would
5 have weighed the options?

6 A. Oh, absolutely. But I was interested in
7 that position.

8 Q. But, again, you don't know whether you
9 would have applied. You can't tell me that you would
10 have applied?

11 A. I would have weighed the options if the
12 position would have been posted. I was very
13 interested in that position.

14 THE WITNESS: Are we coming up on a
15 break soon here?

16 MR. WILLIAMS: We can break whenever
17 you want to.

18 THE WITNESS: Maybe about 15 minutes.

19 MR. WILLIAMS: If you want to break
20 now, we'll break now.

21 THE WITNESS: No, that's good.

22 MR. WILLIAMS: Let's break at 2:30.

23 THE WITNESS: Okay.

24 BY MR. WILLIAMS:

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1 Q. I'm handing you a document that's
2 identified as Brown-Cole 42.

3 The word, retaliation, that's
4 handwritten on this document, is that your
5 handwriting?

6 A. Yes.

7 Q. Earlier you said that there were
8 situations when visits to a Philadelphia school would
9 necessitate a 7:30 start time to allow you to get
10 there by 8:30, 9 o'clock, whenever the appointment
11 was. Is this an E-mail which approves such a
12 request?

13 A. Yeah. Based on from Ann Del Negro to REDACTED
14 REDACTED , yes.

15 Q. And the final paragraph says, please call
16 me on Wednesday regarding the 11/7 and 11/8 visits,
17 and underneath that apparently you wrote retaliation,
18 and drew an arrow to the word, visits?

19 A. Yes.

20 Q. You viewed that statement by Ann Del Negro
21 as retaliation?

22 A. Well, what I viewed is this never happened
23 before, prior to 2002 -- August of 2002.

24 And can I make another statement? And

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1 the reason I put that there, and please call me with
2 regard to 11/7 and 11/18 -- why was -- it's appalling
3 to me. Why would a level up above REDACTED be
4 concerned about the daily activities of SECs, and it
5 never happened before prior to 2002. That doesn't
6 make sense to me.

7 Q. Well, there's an explanation. We'll move
8 on.

9 The fact that Ann Del Negro would ask
10 REDACTED to call her on Wednesday, somehow
11 adversely affected your life?

12 MS. BREWINGTON: I'm going to object
13 to that.

14 BY MR. WILLIAMS:

15 Q. What was the adverse impact upon you, on
16 the terms and conditions of your employment?

17 A. It was compounded. It wasn't just that
18 one E-mail. It was multiple E-mails, over and over,
19 constant E-mails.

20 First it was the medical. Then it
21 became the calendars. Then it became the travel
22 request. Then it became the daily activities of
23 what's Ken doing.

24 MR. WILLIAMS: I want to break now

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1 because I'm about to enter into a line of questioning
2 that's going to be longer than ten or fifteen
3 minutes.

4 (Recess)

5 BY MR. WILLIAMS:

6 Q. I'm handing you a document that's
7 identified as Brown-Cole 46.

8 Did you see this document back around
9 November 21, 2002?

10 A. Yes.

11 Q. Was it provided to you by REDACTED ?

12 A. Yes.

13 Q. Does it accurately summarize the
14 discussion that you had with REDACTED at that
15 time?

16 A. Yes, but it may be missing a page, if I'm
17 not mistaken. It may be another memo, but it ends
18 with the copy on this page, so it looks like it could
19 be the end of the document. But, yes.

20 Q. The situation was that you were absent
21 from work. You had been ill and, then you returned
22 to work on a reduced schedule?

23 Do I understand correctly?

24 A. Yes.

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1 Q. And the college was asking you for medical
2 documentation that you couldn't work your full
3 schedule, and how long was that going to last, and
4 what were the restrictions in terms of how many hours
5 you could work?

6 A. You mean Sue, Sue Zawislak, I guess?

7 Q. Yes. That's what she was asking of you?

8 A. There were a lot of E-mails in between
9 here. What's the date of this?

10 Yeah, there's some E-mails in between
11 here, but basically, with this E-mail, yes.

12 Q. This actually looks like it's a
13 memorandum, not an E-mail.

14 A. Yeah, I'm sorry, memo.

15 Q. And if I understand what this document
16 says about the position you took, first of all, it
17 was your position that as long as you worked anywhere
18 between 15 and 29 hours, that you had a right to do
19 that?

20 A. Right to do what?

21 Q. Work however many hours you chose to work
22 as long as it fell between 15 and 29 hours a week?

23 A. Yes, per my contract. I signed a
24 contract.

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1 Q. So that if the college wanted you to work
2 29 hours a week but you wanted to work 16 hours a
3 week, that was up to you. It wasn't up to the
4 college. That was your view?

5 A. No, no. My view is that I was
6 accommodating the needs of the college. That there
7 were times that I would work from 8:00 to 12:00. I
8 wasn't always in there from 8:00 to 2:00 for the 29
9 hours per week. But let's get that straight. There
10 was times that -- especially during the summer
11 program that I worked over and above the 29 hours, or
12 if I attended a reunion on a Saturday I would work
13 above the 29 hours.

14 I was more concerned about serving the
15 students. At the same time, trying to create a
16 relationship with my supervisor and trying to provide
17 those services that she requested.

18 Q. But if the upper management of the college
19 said, we want you to work 28 hours a week, it was
20 your position that you had a right to say, no, I'm
21 not going to work 28 hours this week. I'm going to
22 work 16.

23 MS. BREWINGTON: Objection.

24 THE WITNESS: Just according to my

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1 contract, yes. I was only quoting the contract and
2 the policy manual. But as far as Ken -- you're
3 making this a character issue now. But Ken always
4 gave over and above the call of duty, per se, to
5 serve the students.

6 But this particular situation, because
7 I felt it was retaliation and discrimination, yes, I
8 responded that way.

9 Q. You also took the position that you didn't
10 believe that medical excuses were necessary in your
11 case because you were part time?

12 A. Yes, that was based on -- I had seen full-
13 time employees during that time and prior to 2002, go
14 out for extended two to three days and not provide
15 medical excuses. And I'd seen -- and I had been out
16 myself before and didn't provide any reason. I would
17 just let the supervisor know I was going on vacation,
18 and that's the program and it was okay.

19 Q. I'm handing you Brown-Cole 51. Did you
20 receive this memo?

21 A. Yes.

22 Q. On about November 27th, 2002?

23 A. Uh-huh.

24 Q. Jackie Jenkins was Director of Human

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1 Resources, or was at that time?

2 A. Yes.

3 Q. Still is?

4 A. Yes.

5 Q. Now, she is indicating that the medical
6 note that you provided from your physician did not
7 indicate the actual number of hours you were able to
8 work. That is a correct statement, is it not?

9 A. What is a correct statement? I'm sorry.

10 Q. Her statement that there's no indication
11 of the actual number of hours you're able to work; is
12 that correct?

13 MS. BREWINGTON: Is it correct that
14 she stated it, or is it correct --

15 BY MR. WILLIAMS:

16 Q. No, that is a correct statement of fact?

17 A. I assume so. I don't have the doctor's
18 excuse -- the doctor's note in front of me right now,
19 but I would have to say so.

20 Q. And she's also correct, as a matter of
21 fact, in stating that the doctor's note did not
22 indicate whether full activity means working 29 hours
23 at Delaware Tech?

24 A. Yes, I guess so.

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1 Q. I'm handing you documents identified as
2 Brown-Cole 53 and 54.

3 Is this a copy of the memorandum dated
4 December 4, 2002 which you authored and was in
5 response to the document of Jackie Jenkins that we
6 just talked about?

7 A. Okay. This is from me to her.

8 Q. Is this your response to her November 27th
9 --

10 A. Yes. Yes.

11 Q. You are declining to do what it is that
12 she asked you to do in her November 27th memorandum;
13 is that fair to say?

14 A. No, as stated, I felt I provided all the
15 information necessary and that I thought it was just
16 harassment because I'd taken off prior to 2002,
17 August of 2002, three, four days and it never became
18 an issue. And Sue Zawislak made this an issue and
19 she got HR involved.

20 Q. And you prolonged the issue by not doing
21 what they asked you to do in the first instance, did
22 you not?

23 A. I felt I did what I was asked to do, and
24 my doctor provided --

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1 Q. Let's go back to that then. Let's look at
2 what she asked you to do.

3 On November 27th she asked you to
4 provide a statement from the physician which was
5 signed. You did that; is that correct?

6 A. As I recall, yes.

7 Q. Well, isn't that what the first sentence
8 of your December 4 memo says?

9 A. Okay. Yes.

10 Q. She said, there's no indication of the
11 actual number of hours you were able to work. She
12 wanted your doctor -- she wanted something from your
13 physician indicating the actual number of hours you
14 were able to work. You declined to do that?

15 A. Okay. Yes. I'm sorry.

16 Q. She asked whether returning to full
17 activity means working 29 hours at Del Tech. You
18 didn't provide a response to that question?

19 A. I think I responded by quoting the PP --
20 Personnel and Policy Manual on employees, temporary
21 employees.

22 Q. You did not give her a doctor's note which
23 indicated whether full activity meant working 29
24 hours at Delaware Tech; is that correct?

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1 A. No.

2 Q. That's incorrect or that's correct?

3 A. That's correct, as I recall.

4 Q. You continued to take the position that as
5 long as you were working somewhere between 15 and 29
6 hours a week, you were fulfilling the terms and
7 conditions of your contract, and the section of the
8 college's policy that you refer to in the third
9 paragraph of your December 4 memo?

10 A. Yes.

11 Q. And you took the position that if they
12 continued to ask you to do all of what you were being
13 asked to do, that you would consider that an act of
14 retaliation?

15 A. I considered all of that an act of
16 retaliation, not just that.

17 Q. I'm handing you Brown-Cole 52 which, I
18 believe, is a copy of an E-mail from Jackie Jenkins
19 to you dated December 4, 2002?

20 A. Uh-huh.

21 Q. And in the first sentence of the E-mail it
22 indicates that Jackie Jenkins received your December
23 4, 2002 memo, which is the document we just talked
24 about?

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1 A. Uh-huh.

2 Q. Is that your understanding?

3 A. Yes.

4 Q. And, then in the first paragraph Jackie
5 Jenkins again takes the position that the
6 documentation you've provided to that date did not
7 clearly communicate the actual number of hours you're
8 able to work. Nor did it address the duration of the
9 reduced hours.

10 We just talked about that, and would
11 you agree that, in fact, that's a correct statement
12 of fact?

13 A. Yes.

14 Q. In the next paragraph, in the second
15 sentence, she pointed out that the hours of work and
16 work schedule are established by the department and
17 approved by the Campus Director, and that any
18 adjustment to an employee's work schedule must be
19 approved by the Campus Director. Do you see that?

20 A. Yes.

21 Q. She once again asks you to provide the
22 information she was requesting by December 9, 2002.

23 A. Uh-huh.

24 Q. Did you do that?

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1 A. No.

2 Q. I'm handing you a document identified as
3 Brown-Cole 55, which appears to be an E-mail from you
4 to Jackie Jenkins dated December 6, 2002?

5 A. Uh-huh.

6 Q. You take the position in the second
7 sentence that, quote, I've given you all the
8 information that you have requested, unquote?

9 A. Yes.

10 Q. In the last sentence of the first
11 paragraph you indicate you're working 20 hours a
12 week; is that right?

13 A. At that time, yeah.

14 Q. And, then you once again take the position
15 that despite what Jackie Jenkins said in her December
16 4 E-mail, you were satisfying the terms and
17 conditions of your contract?

18 A. Uh-huh. Yes.

19 Q. I'm handing you a letter identified as
20 Brown-Cole 57 through 62. It's actually a letter
21 with some attachments, three-page letter with
22 attachments.

23 A. Uh-huh.

24 Q. Did you receive this letter?

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1 A. Yes.

2 Q. On Brown-Cole, page 60, the first
3 attachment --

4 A. Okay.

5 Q. -- there is handwritten word, retaliation,
6 with arrows. That's you, that's your writing?

7 A. Yes.

8 Q. In the first paragraph Jackie Jenkins, in
9 the second sentence, says that, on December 4 I
10 requested that you provide your physician's note in a
11 specified format by December 9.

12 The next sentence says, rather than
13 provide the requested information, you raised a
14 number of issues that, although I'm happy to address,
15 have no bearing on your obligation to provide
16 appropriate substantiation of your request for
17 reduction in hours due to medical reasons.

18 She's correct, is she not, that rather
19 than provide the information in the requested format,
20 you raised issues about whether you should be
21 required to do so?

22 A. No, I disagree with that.

23 Q. Did you provide the medical documentation
24 in the required format by December 9th?

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1 A. No.

2 Q. In the second sentence -- paragraph rather
3 -- and this is from the Director of Human Relations;
4 is that correct?

5 A. Resources.

6 Q. Human Resources?

7 A. Right, but these two don't -- these two
8 don't go together. I don't know if you just stapled
9 these together for some reason, but these don't go
10 with this.

11 Q. Let's remove the attachments. And in the
12 third paragraph, for the second time now, Jackie
13 Jenkins -- third paragraph, page Brown-Cole 57 of the
14 December 13th letter, Jackie Jenkins again points out
15 that it is not the employee's option to choose how
16 many part-time hours he or she will work, but rather
17 that's the prerogative of the Campus Director.

18 Is that your understanding of what
19 she's telling you in this paragraph?

20 A. Yes.

21 Q. On the second page in the first full
22 paragraph about midway through, she explains that the
23 purpose of making the request for the medical
24 documentation is to enable the Campus Director to

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1 determine whether an employee's limitations -- in
2 light of the employee's limitations, the employee's
3 able to perform the essential functions of the
4 position. Do you see that?

5 A. Uh-huh. Yes.

6 Q. She tells you that if you don't provide
7 the required documentation, you're going to be
8 expected to --

9 A. Threatened with termination.

10 Q. You're going to be expected to work from
11 8:30 to 2:30?

12 A. Yes.

13 Q. Did you ever provide the documentation she
14 had been requesting in a format in which she
15 requested it?

16 A. No.

17 Q. Did you return to the schedule that she
18 specifies on the second -- I'm sorry -- on the third
19 page of this letter -- second page of the letter?

20 A. No, REDACTED provided the
21 documentation.

22 Q. And how did REDACTED get the
23 documentation?

24 A. She called the doctor's office and the

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1 doctor's office sent it.

2 Q. And did you refuse or decline to do that?

3 A. Yes, I felt I provided all the information
4 necessary, and it was just an act of retaliation.

5 Q. Did you consider the fact that it was also
6 an act of insubordination on your part?

7 A. No, I was willing to deal with that.

8 Q. You didn't view that as insubordination?

9 A. No, I felt the retaliation and the
10 discrimination because of the events of 2002 -- I
11 felt that I had did all I had -- I had provided all
12 the information, and that it was a case of
13 harassment, a case of retaliation, and even the
14 document that was finally provided, it wasn't even
15 clear enough to see -- understand whether it says I
16 was going to work from 8:00 to 12:00, and what time I
17 was going to work to 8:00 to 12:00 anyway.

18 So, no, I didn't feel it was
19 insubordination. Why would I feel that. I felt I
20 was being harassed, you know. For me to feel that,
21 you know, other than that it just wasn't logical to
22 me.

23 Q. So as long as you feel that you're being
24 harassed, if you don't think it's logical in your

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1 view, you're free to disregard --

2 MS. BREWINGTON: Objection.

3 Argumentative.

4 BY MR. WILLIAMS:

5 Q. -- you're free to disregard a directive
6 from the Director of Human Resources?

7 A. Here's my statement. I felt I was
8 harassed. I felt I was retaliated against, in some
9 cases discriminated against, and treated differently
10 than other program -- TRIO Program participants. And
11 I just felt that it wasn't so much Jackie Jenkins.
12 It was Susan Zawislak and Ann Del Negro who uses
13 Jackie Jenkins, getting her involved at a point that
14 it was nothing she could do but respond the way that
15 she responded.

16 Q. Did Jackie Jenkins tell you there was
17 nothing she could do but to respond in the way in
18 which she responded?

19 A. No, I had no conversation with Jackie
20 Jenkins other than the E-mails.

21 Q. The fact of the matter is you refused to
22 comply with what Jackie Jenkins asked you to do?

23 A. No, I disagree.

24 Q. Did you give her the medical documentation

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1 in the format that she requested?

2 A. Yes, I felt I did. I felt that I gave her
3 the information that she requested.

4 Q. Did the medical documentation that you
5 provided her identify the actual number of hours you
6 were able to work?

7 A. At one point, no.

8 Q. At what point did the medical --

9 A. At one point in the E-mail. I mean, I
10 can't go back and say where. We just went over that.
11 At one point in the E-mails, she kept requesting more
12 and more information. And I gave the information up
13 until the end of December, in this letter here where
14 I was threatened with termination.

15 Q. Let's go back over those, Mr. Cole. We
16 have a lot of time here.

17 A. We have a lot of time?

18 Q. Yes, as much time as it takes.

19 A. I'm here.

20 Q. Going back to the Brown-Cole 51, the
21 November 27th, 2002 memorandum from Jackie Jenkins,
22 she told you that in the medical documentation you
23 provided there was no indication the actual number of
24 hours you were able to work.

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1 When I asked you about that document
2 earlier, you agreed that that was an accurate
3 statement of fact?

4 A. And I also said that I gave -- at
5 different stages in the E-mails based on her request,
6 I gave her all I felt that she was requesting. There
7 was a point at the end of December or mid December
8 that she threatened me with termination in this
9 letter. I felt that I had given her all that she had
10 requested.

11 And, then, you asked me, did I give
12 the final document. I said, no, REDACTED gave
13 her the final document, the doctor's note.

14 Q. Mr. Cole, as of November 27th, 2002 she --
15 Jackie Jenkins correctly pointed out that on the
16 medical documentation you provided there was no
17 indication of the actual number of hours you were
18 able to work; isn't that correct?

19 A. I said that before.

20 Q. And on December 13, 2002 she continues to
21 tell you that you're not providing medical
22 documentation of the actual number of hours you were
23 able to work?

24 A. Yes.

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1 Q. And what she asked you to do was to
2 provide that by December 29th. You didn't do that?

3 A. No.

4 Q. And as of December 13, you still hadn't
5 done it?

6 A. No.

7 Q. And subsequent to December 13th, you
8 didn't do it. REDACTED did it?

9 A. That's right. It was done. I felt
10 discrimination and retaliation at that point.

11 Q. And, in fact, the December 13th letter is
12 the third time Jackie Jenkins asked you for the
13 medical documentation in the format that she was
14 looking for?

15 A. Yeah. I didn't count the times, but it's
16 quite a few E-mails.

17 Q. Well, let's count them. We have November
18 27th.

19 A. Okay. We've got three.

20 Q. We have December 4th, with the deadline of
21 December 9th.

22 A. Okay.

23 Q. And, then, you have December 13th. This
24 is the third time she's asking you.

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1 A. Yeah, but you're trying to convince me in
2 my mind that I didn't feel retaliation and harassment
3 at that time. And you can't do it.

4 Q. I'm not trying to convince you of
5 anything. I'm trying to ask you questions and get
6 responses to my questions.

7 A. I gave you the responses.

8 Q. Are you telling me that it was your belief
9 that Jackie Jenkins was retaliating against you
10 because of your race?

11 A. No.

12 Q. I'm going to hand you a document that has
13 Bates stamps number on it Brown-Cole 74 through 92,
14 and ask you if you can identify that document?

15 A. Yes.

16 Q. What is it?

17 A. Log sheet.

18 Q. In your handwriting?

19 A. Yes.

20 Q. There are dates going down the left-hand
21 column. Do those dates represent the dates when
22 various entries were made?

23 A. Yes.

24 Q. Is this something you did while you were

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1 at work?

2 A. I would maintain a log everywhere I am at
3 work. Whether it's business, whether it's PECO,
4 whether it's the military, I maintain a log.

5 Q. This log, do you log entries every day?

6 A. Yes.

7 Q. You provided this particular log to your
8 attorney; I take it?

9 A. Yes.

10 Q. Are there logs covering other time periods
11 which you did not provide to your attorney?

12 A. Yes.

13 Q. Why did you provide this particular log to
14 your attorney?

15 A. Because that's the log period of
16 relevance.

17 Q. Would I be correct in understanding that
18 nothing of relevance happened after April 23rd of
19 2003?

20 A. What date?

21 Q. April 23rd, 2003?

22 A. To some extent some things are still going
23 on. But I felt that that was the relevant period of
24 time. I didn't think that -- I mean, I have it, if

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1 that's your question, to be presented, I have it.

2 But I just felt that that was just the relevant
3 period of time.

4 Q. I accept the fact that you think this is
5 the relevant period of time. Do you think that
6 because there wasn't any retaliation after --

7 A. No.

8 Q. -- April 23rd --

9 A. No, there was some other --

10 Q. Let me finish my question and, then, you
11 can have as much time as you want to answer.

12 A. Okay. I'm sorry.

13 Q. Is that because you don't believe that
14 there were any acts of retaliation subsequent to
15 April 23rd, 2003?

16 A. No, I think there's more acts of
17 retaliation.

18 Q. And what are they?

19 A. April of 2003. I think there's acts of
20 retaliation in -- April, 2003 -- up until REDACTED
21 REDACTED left. She left in February of 2004. Such
22 as retaliation, discrimination. I felt --

23 Q. The fact that she left?

24 A. No. No. I'm not saying that. Up until

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1 now really.

2 Q. And I'm going to ask you, subsequent to
3 April 23rd, 2003 --

4 A. I think the other incidents of retaliation
5 concerning scrutinizing work schedules, what time do
6 you start, log in that time. When you get to the
7 school, logging in that; that continued up until Ann
8 Del Negro decided to take another position elsewhere,
9 in conjunction with some other things, the promotion
10 of -- not promotion, but the lateral transfer of
11 Andrea -- let me go back. I'm trying to get these
12 chronological dates together.

13 The point where Jacquita Wright
14 Henderson was made acting over UBMS, Upward Bound
15 Math Science. That was another incident I felt was a
16 retaliatory and discrimination.

17 The point where Andrea Coleman came in
18 over the UBMS group was retaliation.

19 The point where REDACTED --
20 I mean, Roseanna Brown-Simmons coming over the group,
21 UBMS, is retaliation..

22 Q. You filed your charge of discrimination --
23 I'll hand you a document that's identified as DEF
24 366. Is this your packet of the charge of

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1 discrimination?

2 A. Yes.

3 Q. And you signed it and dated it on October
4 15th, 2002?

5 A. Yes.

6 Q. You talk in here about your understanding
7 that Paul Morris was promoted. Do you know when that
8 took effect?

9 A. His promotion?

10 Q. Yes.

11 A. No, I only went by the newsletter at that
12 time because there was no -- other than a newsletter,
13 that was the only announcement that Paul Morris was
14 promoted.

15 Q. It was prior to the time when Paul Morris
16 met with you on August 12th; isn't that correct?

17 A. That newsletter?

18 Q. No, what you characterized as a promotion,
19 and what was described as a promotion in the
20 newsletter?

21 A. What's your question?

22 Q. Let's call it a promotion for the sake of
23 simplicity which is what it's referred to in the
24 newsletter.

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1 A. Okay.

2 Q. The promotion occurred before Paul Morris
3 met with you on August 12th to tell you about the
4 move?

5 A. Well, see, I'm not -- here's where I'm not
6 real clear in terms of recalling. I do know that the
7 newsletter came out showing him promoted.

8 But I also realize that I thought he
9 was acting out of his authority by making a personal
10 decision to move the UBMS group. That's when I
11 started asking questions about his authority. What
12 authority does he have to direct us or direct the
13 UBMS group to move.

14 And that's when the investigation
15 started with HR to see if the job was posted.

16 Q. As of the time that you sat down with Paul
17 Morris on August 12th --

18 A. Okay.

19 Q. -- and he informed you of the decision to
20 move the Upward Bound Math Science group, did you
21 have an understanding as to whether he had been
22 promoted?

23 MS. BREWINGTON: I'm going to object.

24 Asked and answered.

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1 MR. WILLIAMS: Well, I don't think it
2 has been.

3 THE WITNESS: I thought I just
4 answered that. I thought I just said, when I
5 received the newsletter and didn't see any promotion
6 -- I mean, any posting, I'm asking myself, who's
7 giving him the authority, because at that time Paul
8 was over Educational Talent Search as a Program
9 Manager. And I didn't know any of the change to that
10 other than the newsletter that he was promoted.

11 So I'm starting to question his
12 authority, 'cause now you're telling us it's his
13 personal vision for Upward Bound Math Science to have
14 their own defined space. The move will go forward.
15 It had been approved. The move will go forward.

16 So I'm starting to question that
17 authority. What's the legitimacy of that authority,
18 if that authority hadn't been -- that position hadn't
19 been posted.

20 BY MR. WILLIAMS:

21 Q. Mr. Cole, in this charge of discrimination
22 there's a check mark next to race; do you see that?

23 A. Where?

24 Q. In the -- there's a box which says race,

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1 color, sex, religion and national origin, age,
2 retaliation, disability, other. It's right above the
3 text of your charge. It's about the middle of the
4 page, above the --

5 A. Oh, okay.

6 Q. -- the text of your charge; do you see
7 that?

8 A. Yes.

9 Q. There's no check mark next to retaliation;
10 do you see that?

11 A. That's because they made a mistake.

12 Q. Did you ever correct that mistake?

13 A. No, the Department of Labor, Brenda Sands,
14 realized that she made a mistake, and she amended --
15 as far as I know, I never did see the amendment. She
16 was supposed to amend the charge of discrimination
17 and include the retaliation piece.

18 Q. So as of October 15, 2002, you were
19 claiming retaliation. What was the retaliation that
20 you were complaining about as of October 15th, 2002?

21 A. Well, we just went through that. I don't
22 understand what you're asking me. It's sort of --

23 Q. You --

24 A. I mean, we just sat here for an

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1 hour-and-a-half, or two hours or so, and went through
2 what I felt was retaliation, and the documents that
3 you provided, okay.

4 The medical excuse, the reduction in
5 hours, the scrutinizing our work schedules, the
6 change in the travel request, and I could go on and
7 on and on.

8 Q. Well, let's analyze what you just said,
9 Mr. Cole. The medical excuse, that happened in
10 November and December of 2002, did it not?

11 A. No, the medical started in September of
12 2002.

13 Q. Oh, so that went on -- that went back and
14 forth, and you refused to comply for three months?

15 A. No, that's not true. There's a series of
16 E-mails that went with -- between REDACTED , the
17 Program Manager, and Ann and Sue, and, then HR got
18 involved around November, early November, if I'm not
19 mistaken.

20 But the medical started with Sue, not
21 with HR.

22 Q. In this charge you say -- you talk about
23 being informed in August by Paul Morris. And we've
24 established that that was August 12th, being informed

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1 of the move. Are you claiming that that was
2 retaliation?

3 A. No.

4 Q. You're claiming that was race
5 discrimination?

6 A. Yes, and I'm claiming that the move and
7 once I submitted the grievance and, then, things
8 started to change for UBMS in terms of retaliation.

9 Q. This charge of discrimination is the first
10 time you contended in writing or orally -- well, let
11 me back up.

12 This charge of discrimination is the
13 first time you ever claimed in writing that the move
14 to 408, Room 408, was based upon race?

15 A. That's not true.

16 Q. What is the first time in writing that you
17 made the claim that the move to Room 408 was based
18 upon race?

19 A. In writing?

20 Q. Yes.

21 A. When we were informed to move after the
22 meeting with Paul -- there was the meeting prior to
23 that meeting that Paul and I met together, but this
24 August 12th meeting that you're referencing to, we

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1 were told to -- by Paul, to put it in black and white
2 where your job description say that you can't move.

3 And we went to the Program Manager.

4 And we thought that was sort of unacceptable, and we
5 requested a meeting with Ann Del Negro -- yes, Ann
6 Del Negro. And we met in that meeting, and Paul was
7 there, the UBMS staff was there.

8 And I had a document that we had --
9 that coworkers had put together, and I read from that
10 document. And I used words -- I mean, in addition to
11 productivity, employee relations and morale, I used
12 words like treat -- we felt we was being treated
13 unfairly. We felt that we was being treated
14 differently than if we were a different group.

15 I used words, and other words was used
16 like we felt that -- one person felt that they was
17 being punished, that word was used.

18 And, then we used ulterior motives.
19 That was -- we felt that there was ulterior motives
20 for the move. And that created some response of Ann
21 Del Negro was very upset.

22 And she was upset that I read the
23 document because she said -- because when Paul said,
24 put it in black and white, I think I sent an E-mail